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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,920	08/10/2001	Christopher D. Ludwig	6682-80486-01	5176

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EXAMINER

DUNHAM, JASON B

ART UNIT	PAPER NUMBER
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3625

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/927,920	Applicant(s) LUDWIG ET AL.	
	Examiner JASON B. DUNHAM	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-15,52,54-60,68-78 and 81-83 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-15,52,54-60,68-78 and 81-83 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant amended claims 1 and 52 in the response filed February 15, 2008 in reply to the office action dated November 19, 2007. Claims 1, 4-15, 52, 54-60, 68-78, and 81-83 are pending.

Response to Arguments

Applicant's arguments filed February 15, 2008 have been fully considered but they are not persuasive. Applicant argues that the combination of Jorgenson and Robinson is directed towards tracking properties of crops for segregation purposes and therefore teaches away from tracking a commingled product. The examiner disagrees with this argument as Jorgenson and Robinson provide embodiments for tracking the history of a crop throughout a supply chain through the use of electronic (RFID tags, see at least Robinson) lot identifiers. While the primary embodiment of Jorgenson and Robinson is providing segregation of crops, the supply chain history can be viewed to determine traits of certain grains from various fields included in wheat mix (see at least Jorgenson: paragraphs 42 and 76) and whether the traits have been preserved or contaminated (see at least Jorgenson, paragraph 47 disclosing storage of GMO and non-GMO crops). Lastly, applicant argues that the combination of Jorgenson and Robinson cannot disclose a new lot identifier assigned to a buried marker. The examiner submits that the electronic RFID tags of Robinson provide new lot identifiers within the electronic database based on product history (storage and shipment).

Independent claims 1, 52, 68, and 81 as well as their dependent claims are rejected under this rationale.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 52 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 52 recites a new lot identifier tracking a new single lot of commingled commodities and also using the same identifier to track the crops as if they were not commingled. It is unclear whether the commodities have been commingled or kept separate during transportation or storage.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,4,7-15,52,54-56,58-60,68-78, and 81-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jorgenson (US 2002/0095232) in view of Robinson (US 2001/0029996).

Referring to claim 1. The combination of Jorgenson and Robinson discloses a method comprising:

- Receiving product movement information for a plurality of shipments of products, wherein the product movement information includes a source location, a destination location, and a transportation device for each of the shipments, and further wherein the products include at least two grown commodities from different fields (Jorgenson: paragraphs 35 and 44-45);
- Determining a plurality of lots based on the product movement information by assigning a new electronic lot identifier each time the grown commodities from two or more of the different fields are commingled by storing or moving the grown commodities together as a single lot, the new electronic lot identifier tracking the commingled lot and tracking the previously non-commingled lots as a single lot identifier (Robinson: abstract, figure 5, and paragraphs 50 and 70); and
- Generating, based on the product movement information and the assigned lot identifiers, a report identifying the plurality of lots in which the grown commodities from different fields have been commingled (Robinson: abstract, figure 5, and paragraphs 50 and 95-96).

Jorgenson discloses all of the above but does not explicitly disclose determining new lots based on crop movement and generating new identifiers for the new lots. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have modified the method of Jorgenson to have included assigning a new lot identifier each time the grown commodities from two or more of the different fields

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are commingled and generating, based on the product movement information, a report identifying commingled products, as taught by Robinson, in order to properly identify and track bulk material (i.e. crops) throughout its transportation (Robinson: abstract and paragraph 2).

Referring to claim 4. The combination of Jorgenson and Robinson further discloses a method wherein the product movement information includes a designation of a farm, a field, and time harvested (Jorgenson: paragraph 44).

Referring to claim 7. The combination of Jorgenson and Robinson further discloses a method comprising:

- Presenting a contract interface to define contracts between producers and customers based on order established by the customers (Jorgenson: figure 4).
- Providing a contract module to monitor contract generation and prevent a contract from being generated that is in excess of the order (Jorgenson: paragraphs 48 & 75, figures 4 & 10).

Referring to claim 8. The combination of Jorgenson and Robinson further discloses a method comprising presenting an interface to define programs for tracking a given one of the determined lots (Jorgenson: paragraph 7 & figure 4).

Referring to claim 9. The combination of Jorgenson and Robinson further discloses a method comprising presenting an interface for receiving program information to establish checklists for procedures for moving and storing the given lot (Jorgenson: paragraph 45).

Referring to claim 10. The combination of Jorgenson and Robinson further discloses a method comprising:

- Presenting an interface for receiving program information for establishing parameters for certifying actions taken in moving and storing the given lot (Jorgenson: paragraphs 41 & 61); and
- And receiving an indication that the actions have been certified (Jorgenson: paragraphs 41 & 61).

Referring to claim 11. The combination of Jorgenson and Robinson further discloses a method wherein each of the lot identifiers comprises an indication of the character of the product (Jorgenson: paragraphs 42 & 84).

Referring to claim 12. The combination of Jorgenson and Robinson further discloses a method wherein the indication of the character of the product includes the seed variety used to grow each of the grown commodities (Jorgenson: paragraph 31 & figure 19).

Referring to claim 13. The combination of Jorgenson and Robinson further discloses a method wherein the indication of the character of the product includes an indication of whether any of the grown commodities is bio-engineered (Jorgenson: paragraphs 35 & 47).

Referring to claim 14. The combination of Jorgenson and Robinson further discloses a method wherein the indication of the character of the product includes an indication of whether any of the grown commodities is conventionally grown (Jorgenson: paragraphs 35).

Referring to claim 15. The combination of Jorgenson and Robinson further discloses a method wherein the indication of the character of the product includes an indication of whether any of the grown commodities is organically grown (Jorgenson: paragraphs 35 & 47).

Referring to claim 52. Claim 52 is rejected under the same rationale set forth above (see at least the rejection of claim 1). The combination of Jorgenson and Robinson further discloses a medium wherein the timing information includes a time stamp identifying when the lot is moved and a medium that presents a tracing interface wherein a given lot can be identified and its history traced by identifying any other lots that have been commingled with the given lot (Robinson: abstract, figure 5 and paragraph 38). The examiner notes that Robinson discloses identifying lots at specific times by tagging. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have modified the medium of Jorgenson to have included timing and tracing information, as taught by Robinson, in order to properly identify and track bulk material (i.e. crops) throughout its transportation (Robinson: abstract and paragraph 2).

Referring to claim 54. The combination of Jorgenson and Robinson further discloses a computer readable medium wherein the timing information includes a time the lot moves in and a time the lot moves out (Jorgenson: figures 3-6).

Referring to claim 55. The combination of Jorgenson and Robinson further discloses a computer readable medium wherein the storage information includes an indication of whether the storage facility is clean and empty (Jorgenson: paragraph 47).

Referring to claim 56. The combination of Jorgenson and Robinson further discloses a computer readable medium wherein the movement information includes an indication of whether the transportation device is clean and empty (Jorgenson: paragraph 47).

Referring to claims 58-60. Claims 58-60 are rejected under the same rationale set forth above.

Referring to claims 68-74. Claims 68-74 are rejected under the same rationale set forth above. The combination of Jorgenson and Robinson discloses a system operating a web server (Jorgenson: paragraph 6) and electronically delivering certification documents (Jorgenson: paragraph 86).

Referring to claim 75. The combination of Jorgenson and Robinson further discloses a system comprising an audit, certification, and testing module configured to allow transporters of the lot to identify for each of the lots a specific transportation device, a time the lot enters the transportation device, a time the lot leaves the transportation device, and a clean and empty status of the transportation device (Jorgenson: paragraphs 41,47, 67 & figure 9).

Referring to claim 76. The combination of Jorgenson and Robinson further discloses a system that is in communication with a business entity and receives movement information from the business entity (Jorgenson: paragraph 45).

Referring to claims 77-78 and 81-82. Claims 77-78 and 81-82 are rejected under the same rationale set forth above.

Claims 5-6,57, and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Jorgenson and Robinson in view of Shortridge (US 2001/0011437).

Referring to claims 5-6,57, and 83. The combination of Jorgenson and Robinson discloses all of the above, but does not expressly disclose a method or computer-readable medium wherein a recall order is issued for one or all of the lots determined to have been commingled with a contaminated lot. Shortridge discloses a method and computer-readable medium for determining all lots that have been contaminated and tracing a lot's history thereby identifying any other lots that have been commingled with the given lot based on a report (Shortridge: paragraphs 29,43 and claim 1). The examiner notes that Shortridge discloses testing for contamination of lots that would inherently be recalled if they were found to be contaminated. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have modified the method and medium of Jorgenson/ Robinson to have included means for determining all lots that have been contaminated and tracing a lot's history thereby identifying any other lots that have been commingled with the given lot, as taught by Shortridge, in order to preserve the identity of non-genetically modified seeds (Shortridge: abstract).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON B. DUNHAM whose telephone number is (571)272-8109. The examiner can normally be reached on M-F, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey A. Smith/
Supervisory Patent Examiner, Art
Unit 3625

JBD
Patent Examiner
5/9/08